IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 128 OF 2003
ALONG WITH
SECOND APPEAL NO. 194 OF 2002

S.A.No.128/03

Narayan s/o.Hariba Gaikwad & anr. ... Appellants.
Versus.
Baban s/o.Govind Gaikwad & anr. ... Respondents.

S.A.No.194/02.

Hariba Jayram Gaikwad & ors. ... Appellants.
Versus.
Baban s/o.Govind Gaikwad & anr. ... Respondents.

Shri N.Y.Gupte with Shri Rajesh Patil for the
Appellants in both Appeals.

Shri R.V.More for the Respondent No.1 in both Appeals.

CORAM : ABHAY S. OKA, J.

DATED : 2nd March, 2005.

P.C.:

1. Both the Appeals arise out of cross suits filed by the parties and there is a common Judgment of the Appellate Court. Therefore, both the Appeals can be decided by a common order.

2. This Second Appeal arises out of Regular Civil Suit No.146 of 1986 filed by the Appellant against the Respondents. The said suit was filed for declaration that the consolidation scheme in relation to land bearing Gat No.427 admeasuring 20 R is ab-initio void and is liable to be set aside. The Respondent No.1

herein and one Govind Jayaram Gaikwad (the Respondent in Second appeal No.192 of 2002) filed Regular Civil Suit No.146 of 1983 against the Appellants herein and Kalavati Hariba Gaikwad and four others (who are all Appellants in Second Appeal No.192 of 2002). The said Regular Civil Suit No.146 of 1983 is filed for injunction simplicitor in respect of the same property. The trial Court dismissed the Regular Civil Suit No.146 of 1983 and decreed Regular Civil Suit No.146 of 1986 and declared the consolidation scheme null and void in relation to the said area of 20 R. In the Appeals preferred in the District Court, both the Decrees are reversed. The Appellate Court held that the Appellants had challenged the consolidation scheme by preferring an Appeal before the Settlement Commissioner which was dismissed and a Civil Suit for challenging the Scheme under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, (hereinafter referred to as "the said Act") was not maintainable.

3. Shri Gupte the learned Counsel appearing for the Appellants has relied upon the additional grounds which are permitted to be added in the Memorandum of Appeal.

The said grounds read thus:

(i) Can the scheme finalized under Bombay Prevention of Fragmentation and Consolidation of Holdings Act oust the jurisdiction of Civil

Courts to decide the title to the property of the Plaintiff and the Defendant when there is dispute of holding of land under the registered sale deed which is admitted legal document by the plaintiff and the defendant.

(j) Can the jurisdiction of the Civil Courts be ousted to decide the title of the Plaintiff who has dispute of holding of the land under sale deed without going into such sale deed/ conveyance the holdings of the parties are finalized by the Settlement Commissioner and land owner holding valid sale deed is deprived of his property.

(k) In case of dispute of holdings of the land of respective plaintiffs and defendants on the basis of sale deeds where no land is exchanged in consolidation scheme is the State Government and/or consolidation authority necessary party to decide the dispute of holdings which is on the basis of sale deed which is not in dispute and in view of the provisions of section 36B of the Consolidation Act.

(l) Section 32 of the consolidation Act empowers the implementing authorities to vary the scheme on errors, section 26 empowers implementation

of scheme and in such case where there is dispute of holdings of Plaintiff and Defendant on the basis of sale deeds where are admitted documents, in such circumstances would the jurisdiction of the Civil Courts would be ousted under section 36A of the Consolidation Act to decide respective holdings of the plaintiffs and the defendants.

4. After the Appeal preferred by the Appellants for challenging the Consolidation Scheme under the said Act was dismissed by the Settlement Commissioner, the Scheme attained finality so far as the parties are concerned. Power to vary the scheme could not have been exercised by the Civil Court. It was for the Appellants to take out appropriate Application for variation of the Scheme to the Competent Authority under the said Act. The Appellate Court held that the concerned Authorities under the said Act were necessary parties to the suit as behind the back of the Authorities no declaration as regards the Scheme could have been granted. Under the Scheme the Respondents were entitled to claim a title to the disputed property. Considering all these findings it is difficult to find error in the Judgment of the Appellate Court. As the Appellants could not have succeeded in obtaining relief of Declaration, the decree for injunction in the cross suit must follow.

5. Hence no substantial question of law arises in both the Appeals. Both the Appeals are dismissed with no order as to costs.

Judge.